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09/961,123	09/20/2001	Vicki Jo Hardesty		4144

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04/06/2005

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EXAMINER

DO, CHAT C

ART UNIT	PAPER NUMBER
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2193

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/961,123

Applicant(s)

HARDESTY, VICKI JO

Examiner

Chat C. Do

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 November 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This communication is responsive to Amendment filed 11/17/2004.
2. Claims 1-12 are pending in this application. Claims 1-2 and 4 are independent claims. In Amendment, claims 2 and 4 are amended. This Office action is made final.

#### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 2-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Ratcliff (U.S. 4,575,804).

Re claim 2, Ratcliff discloses in Figures 1 and 4 a process for accumulating and storing numbers of calories consumed in a particular day (abstract) comprising the steps of: (a) determining the amount of protein (protein button 100) consumed by weight measure for a particular food item or meal, (b) determining the amount of carbohydrates (carbony button 100) consumed by weight measure for a particular food item or meal, (c) determining the amount of fat (fats button 96) consumed by weight measure for a particular food item or meal, (d) converting (calorie 100) the weights of each grouping of food into calories, and (e) repeating steps a) through d) as (102 button) each additional

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foot item or meal is consumed in a particular day (e.g. col. 2 lines 34-39 for weight serving).

Re claim 3, Ratcliff further discloses in Figures 1 and 4 the step of displaying the daily cumulative calories (152 with 102 CE button) consumed upon an action or input performed by an individual.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1 and 4-12 are rejected under 35 U.S.C. 103(a) as being obvious over Ratcliff (U.S. 4,575,804) in view of Boylan (C.N. 2,198,783).

Re claim 1, Ratcliff discloses in Figure 4 a calorie counting apparatus (abstract lines 4-6) comprising: (a) a rectangular casing (Figure 1 as alternate version) the casing having a front side and a back side, (b) a battery compartment (inherent feature for operating the hand held device) incorporated into the casing, (c) at least one battery (inherent feature for operating the hand-held version) located within the battery compartment, (d) a visual display (90) on the front side of the rectangular casing, (f) an "on" button (102) for turning on power to the calorie counting apparatus, the "on" button located on the front side of the rectangular casing, (g) an "off" (102) button for turning off power to the calorie counting apparatus, the "off" button located on the front side of

the rectangular casing, (h) a protein intake button (100) for inputting the amount of protein consumed by an individual, the protein intake button located on the front side of the rectangular casing, (i) a carbohydrate intake button (Carbody button in middle of row 100) for inputting the amount of carbohydrate consumed by an individual, the carbohydrate intake button located on the front side of the rectangular casing, (j) a fat intake button (FATS button in the right on row 96) for inputting the amount of fat consumed by an individual, the fat intake button located on the front side of the rectangular casing, (k) a clear button (102 button with Clear label) for clearing all data being stored within the calorie counting apparatus, the clear button located on the front side of the rectangular casing, a calorie button for determining caloric intake based upon data previously inputted in the calorie counting apparatus via the protein intake button, carbohydrate intake button, and the fat intake button, the calorie button located on the front side of the rectangular casing, (m) an enter key (102 on the right button with DIETS button) for assisting a user in inputting data into the calorie counting apparatus, the enter key located on the front side of the rectangular casing, (o) and a total button (100 Calorie button on the most left of row 100) for totaling data previously inputted in the calorie counting apparatus via the protein intake button, carbohydrate intake button, and the fat intake button, the total button located on the front side of the rectangular casing. Ratcliff does not disclose (e) a numerical keyboard on the front side of the rectangular casing, the keyboard including a plurality of individual keys representing each number from zero through nine, and (n) a percentage button for determining percentages of caloric intake based upon data previously inputted in the calorie counting apparatus via the protein

intake button, carbohydrate intake button, and the fat intake button, the percentage button located on the front side of the rectangular casing. However, Boylan discloses in Figure 1 (e) a numerical keyboard (upper portion of Figure 1 as widely seen in many calculators or handheld device) on the front side of the rectangular casing, the keyboard including a plurality of individual keys representing each number from zero through nine, and (n) a method of computing percentage (abstract lines 1-2-7) for determining percentages of caloric intake based upon data previously inputted in the calorie counting apparatus via the protein intake button, carbohydrate intake button, and the fat intake button, the percentage button located on the front side of the rectangular casing. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention is made to add a numeric keyboard and a percentage button as seen in Boylan's invention into Ratcliff's invention because the numeric keyboard would enable the operator to easily entering the amount of diets and the percentage button would enable to user or operator to easily determine the percentage of calorie of diet in order to have control of food product (abstract lines 7-13).

Re claim 4, Ratcliff discloses in Figures 1 and 4 process for accumulating (CE), storing, and displaying (90) the amount of type of food consumed in a particular day comprising the steps of: (a) determining the amount of protein (protein button 100) consumed for a particular food item or meal, (b) determining the amount of carbohydrates (carbohy 100) consumed for a particular food item or meal, (c) determining the amount of fat (fats 96) consumed for a particular food item or meal, (d) repeating steps a) through d) as (102 Ce button) each additional food item or meal is

consumed in a particular day and (f) displaying (90) the calculated percentage on a display. Ratcliff does not disclose in Figures 1 and 4(e) calculating the percentage of type of food consumed as a percentage ratio of all food consumed in a particular day. However, Boylan discloses in Figure 1 a percentage method button to calculate the ratio of calorie. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention is made to add a percentage button for calculating the percentage of type of food consumed as a percentage ratio of all food consumed in a particular day as seen in Boylan's invention into Ratcliff's invention because it would enable the user or operator to determine the amount of food taken for better control food intake (abstract lines 7-13).

Re claim 5, Ratcliff further discloses in Figures 1 and 4 in view of Boylan the process for accumulating, storing, and displaying the amount of type of food consumed as a percentage ratio of all food consumed in a particular day wherein the percentage ratio would be calculated on a weight basis (92 as scale for weight food product in Figure 4).

Re claims 6-8, Ratcliff fails to disclose in Figures 1 and 4 the particular type of food would be protein, fat, and carbohydrates. However, Boylan discloses in Figure 1 a percentage method button to calculate the ratio of calorie that would be fat (abstract line 5). In addition, it is obvious application to compute the percentage ratio of particular type of protein and carbohydrates food using similar formula with difference known factor as suggest with fat in the abstract line 5 in Boylan's reference. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention is

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made to add a percentage ratio computation for particular type of food as protein, fat, and carbohydrates as seen in Boylan's reference with fat into Ratcliff's invention because it would enable the user or operator to determine the amount of food taken for better control food intake (abstract lines 7-13).

Re claim 9, Ratcliff fails to disclose in Figures 1 and 4 a process for accumulating, storing, and displaying the amount of type of food consumed as a percentage ratio of all food consumed in a particular day wherein the percentage ratio would be calculated on a caloric basis. However, Boyland discloses in abstract a method to compute percentage ratio would be calculated in a caloric basis. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention is made to add a percentage ratio based on a calorie basis as seen in Boylan's reference with fat into Ratcliff's invention because it would enable the user or operator to determine the amount of food taken for better control food intake (abstract lines 7-13).

Re claims 10-12, these claims have the same limitations cited in claims 6-8 respectively. Thus, claims 10-12 are also rejected under the same rationale as cited in the rejection of rejected claim 6-8 respectively.

### ***Response to Arguments***

7. Applicant's arguments filed 11/17/2004 have been fully considered but they are not persuasive.



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- a. The applicant argues in page 9 for claims 2-3 that the cited reference by Ratcliff (U.S. 4,575,804) do not allow the determination of calories based on a “weight” measure instead it is based on serving of an item.

The examiner respectfully submits that cited reference clearly discloses, teaches, or suggests the calories are based on weight measure as cited in the claim (e.g. col. 2 lines 34-39).

- b. The applicant argues in page 10 for claims 1 and 4-12 that it would not be obvious for an individual who is skilled in the art to which the invention pertains to come across the Boylan prior art reference.

The lacking features or limitations that the primary reference by Ratcliff are a numerical keyboard, a percentage of fat, carbohydrate, and protein intake button. These features or limitations are conventional and widely used by consumers as seen in the secondary reference by Boylan. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention is made to add a numeric keyboard and a percentage button as seen in Boylan’s invention into Ratcliff’s invention because the numeric keyboard would enable the operator to easily entering the amount of diets and the percentage button would enable to user or operator to easily determine the percentage of calorie of diet in order to have control of food product (abstract lines 7-13).

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chat C. Do whose telephone number is (571) 272-3721. The examiner can normally be reached on M => F from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chaki Kakali can be reached on (571) 272-3719. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chat C. Do  
Examiner  
Art Unit 2193

March 31, 2005

*Kakali Chaki*

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